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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 586

LOCAL UNION NO. 25 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and the following, as individuals and representatives of said Local Union No. 25 of Boston, Massachusetts: EDWARD F. JENKINS, MICHAEL J. NORTON and WILLIAM J. McCARTHY, *Petitioners*,

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, *Respondent*.

BRIEF OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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LOCAL UNION NO. 25 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and the following, as individuals and representatives of said Local Union No. 25 of Boston, Massachusetts: EDWARD F. JENKINS, MICHAEL J. NORTON and WILLIAM J. MCCARTHY, Petitioners,

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Respondent.

BRIEF OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinion of the Court Below

The opinion of the Supreme Judicial Court of Massachusetts (App. A of Petition) is reported in 1954 Massachusetts Advance Sheets 827, 122 N. E. (2d) 759.

Jurisdiction

In filing their petition for a writ of certiorari, petitioners have invoked the jurisdiction of this Court under Title 28, U. S. C. Section 1237(3) (Act of June 25, 1948, c. 646, 62 Stat. 929).

Question Presented

Whether the National Labor Relations Act (61 Stat. 136, 29 U. S. C. § 151 et seq.) precludes a state court from granting an injunction, at the instance of a railroad, where a union, which has no dispute with, or claim against, the railroad, induces or encourages individual drivers of motor carriers, in violation of an existing collective bargaining agreement, to refuse to deliver trailers to the railroad for transportation and thereby tortiously interferes with the advantageous business relationship between the railroad and the motor carriers.

Statutes Involved

The controversy which gave rise to this case is neither contemplated nor governed by the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. § 151, et seq.).

The issues in dispute were, and must be, resolved by reference to the common law of the Commonwealth of Massachusetts and the provisions of the Massachusetts statutes G. L. (Ter. Ed.) c. 149, Sections 20C and 24, G. L. (Ter. Ed.) c. 214, Section 9A, G. L. (Ter. Ed.) c. 93, Section 2. These are set forth in the Appendix, infra, pages 17 to 25.

Statement

This case arose when petitioners, who represent drivers and helpers employed by motor carriers in Boston, Massachusetts, picketed at, and trespassed upon, premises of the respondent and induced and encouraged individual drivers employed by motor carriers who approached respondent's

Yard No. 5 in Boston, Massachusetts, to refuse to deliver trailers to the railroad for transportation.

The salient facts are these: the respondent is a railroad engaged in the interstate transportation of general commodities and passengers by rail, subject to the provisions of the Interstate Commerce Act, Part I (49 U. S. C. Section 1 et seq.) and the Railway Labor Act (45 U. S. C. Section 151, et seq.) (R. 189). The petitioner union is a trade union which represents drivers and helpers employed by motor carriers in Boston, Massachusetts (R. 189-190).

Respondent provides a specialized common carrier facility known as "piggy-back" or trailer-on-flat-car service (R. 58, 76, 83, 84-85 and 95) which operates in the following manner: a motor carrier, located in Boston, Massachusetts, will send a motor tractor and trailer to the respondent's Yard No. 5 in Boston, where the trailer is disengaged from the tractor and placed upon a railroad flat car.[1] The work of driving the trailer onto the flat car is performed by drivers employed by New England Transportation Company, a motor carrier subsidiary of the railroad, subject to Part II of the Interstate Commerce Act (R. 72-73). However, once the trailer is on the flat car, it is tied down or untied by employees of the respondent who are members of, and represented by, the Brotherhood of Railroad Carmen of America (R. 54, 72-73). The trailer is thereafter carried, as if it were a container, over the railroad tracks to New York City where the motor carrier's tractor engages it and brings it to a terminal or a consignee in New York (R. 13, 52-54, App. A of Petition, pp. 19-20).

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[1] Piggy-back service has been employed by the general public, including individual shippers and motor carriers (R. 53). Charges are assessed pursuant to a tariff filed with and approved by the Interstate Commerce Commission (R. 53-54). Specially designed equipment peculiarly adapted to the service is used only in that service (R. 61, 62), but has no value for ordinary transportation purposes (R. 65).

The petitioner union was party to a collective bargaining agreement with various motor carriers in Boston who employed the railroad's piggy-back service. This agreement did not prohibit or limit the use of flat cars (R. 135).

The history of the collective bargaining negotiations between the petitioner union and the motor carriers reveals that, commencing in 1946, the petitioner union proposed a prohibition against piggy-back operations, but the contract, when negotiated, eliminated the inhibitory clause (R. 131-133, 243). A similar clause prohibiting the use of flat cars was suggested in the proposed agreement of 1949, but this clause was again eliminated (R. 133-135). The current contract contained no provision limiting or prohibiting the use of flat cars (R. 253, 254-259). Indeed, no contract ever negotiated by the petitioner union contained a prohibition against flat car operation (R. 135).

Petitioner union entered into agreements with New England Transportation Company with full knowledge of the latter's participation in the piggy-back service and no contract with that company ever prohibited the employment of union drivers in connection with such service (R. 153).[2]

The evidence was equally clear that during the life of the then current agreement, the petitioner union made no demands for the elimination of piggy-back service (R. 243).[3] And the drivers employed by motor carriers were never advised of any dispute concerning piggy-back service between the motor carriers and the petitioner union or its officials prior to July 11, 1952 (R. 61, 119-120).[4] The

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[2] "Piggy-back" service has been provided by the respondent since 1938 (R. 130).

[3] There is testimony about a meeting with several motor carriers to discuss the problem, but the matter was never progressed under the grievance procedure (R. 137-138).

[4] The President of petitioner union testified that he had no notion as to how and when the interference complained of arose (R. 139, 141-142, 144).

grievance procedure prescribed in the collective bargaining agreement between the petitioner union and the motor carriers was not invoked or pursued prior to the commencement of the interference hereafter described (R. 137, 141, 145).

Between July 11, 1952 and July 14, 1952, petitioners Norton and McCarthy appeared and picketed at, and trespassed upon, respondent's Yard No. 5 at Boston (R. 101), hailed individual drivers and prevented them from entering respondent's Yard No. 5 (R. 83, 89, 93, 106-107, 117, 166). Several, but not all, motor carrier drivers were prevented from bringing trailers into Yard No. 5 (R. 68, 74, 83, 95, 176). But not all trailers were prevented from entering or leaving respondent's Yard No. 5 and not all drivers were hailed and stopped (R. 59, 74-75, 97, 169-170, 176, 245). Even in the instance of employees of New England Transportation Company, various trailers were handled while others were not (R. 75-76, 87-88, 96, 101, 170-171). And the interference was limited only to the geographical area adjacent to and within respondent's Yard No. 5. Employees of motor carriers were not induced or encouraged to engage in a concerted cessation of any other driving they performed in the course of their employment (R. 118, 125, 245).[5] As a consequence of the petitioners' actions, the respondent's business was interfered with and damaged (R. 60-61, 304-308) (App. A of Petition, p. 29).

The petitioners stated that there was no dispute with the respondent either in the past or at the date of the interference (R. 147, 169, 218, 240) and that they did not seek

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[5] It appears that two trailers were loaded on flat cars on July 11, 1952 (R. 75); and on July 14, 1952, prior to the appearance of petitioners Norton and McCarthy, trailers were loaded on flat cars without interference (R. 87). The same employee of Stone's Express, Michael A. Benkoski who was prevented from driving a trailer into the respondent's Yard No. 5 for transportation from Boston to New York (R. 117-118) was not prevented from driving trailers out of Yard No. 5 which came in from New York (R. 117).

to represent any of respondent's employees (R. 130, 147, 169).

Except as hereafter stated, the proceedings in the Massachusetts Courts are adequately set forth in the Petition at pages 6-8. Reference to the record will further disclose that the Massachusetts Superior Court found, as a fact, that the case did not involve or grow out of a labor dispute (R. 323).

The Massachusetts Supreme Judicial Court rejected petitioners' contention that the State Court was precluded from granting the injunction. The Court concluded, first, that there was an unlawful secondary boycott as defined by Massachusetts statutes (App. A of Petition, pp. 27-28, 31) and, second, that assuming (though not deciding) the validity of the contention that the petitioners were engaged in a secondary boycott prohibited by Section 8(b)(4)(A) of the National Labor Relations Act (29 U. S. C. Section 158(b)), the respondent could not obtain a remedy through the National Labor Relations Board and hence the State Court was free to exercise its traditional equity jurisdiction (App. A of Petition, pp. 23-26).

Summary of Argument

(A) The questions propounded by the petitioners bear no genuine relationship to and do not incorporate the proven facts upon which the issues in this case were actually resolved.

Review by this Court is clearly unnecessary if petitioners invite solutions to hypothetical questions. Clearly, answers to the questions presented by petitioner union will not provide the judicial criteria and the decisional standards which the petitioners urge as reasons for granting the writ (Petition at pp. 12-14).

The text and construction of petitioners' questions (Petition at pp. 2-3) are intended to pose, in the abstract, the

ideal situation of conduct which is either proscribed as an unfair labor practice[6] within the meaning of Section 8(b)(4)(A) of the National Labor Relations Act, or protected as a concerted activity as defined by Section 7 of the National Labor Relations Act, and is, therefore, insulated against State Court action. But the facts and the evidence in this case do not accord with the artificial design of the questions presented by petitioners.

(B) The pleadings of respondent and petitioners alike alleged that the conduct of the petitioners did not create a secondary boycott within the meaning of Section 8(b)(4)(A) of the National Labor Relations Act. The dispute, if any, was between the petitioner union and the motor carrier employers of petitioners' members. The object of the picketing activity, as described by petitioners, was to secure a modification of the existing collective bargaining agreement between the union and the motor carrier and to compel the motor carriers to transport all of their trailers, including those which formerly were carried by the respondent railroad, over the highways. Petitioners' contention was that the complained-of activity was primary and the incidental effect upon the neutral railroad fell within the protected ambit of "primary" picketing. The evidence, however, establishes that both the object of the petitioner union's alleged primary activity and the method and means employed to attain the objective were not protected under Section 7 of the National Labor Relations Act. Accordingly, the State Court was free to act to prevent a tortious interference with the advantageous business relationship between the neutral railroad and the motor carriers. The incidental effect upon the respondent railroad was enjoinable under the provisions of the Massachusetts statutes (Appendix, infra, pp. 17-25) and the common law of the Commonwealth of Massachusetts.

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[6] Throughout this brief, respondent refers to the unfair labor practice proscribed by Section 8(b)(4)(A) as the "secondary boycott" provision.

(C) Assuming, but not conceding, that the petitioner union's activity was in the nature of a secondary boycott, it was not that kind of boycott which is proscribed by Section 8(b)(4)(A) because these activities were directed at individual employees, at a limited geographical point, and were not intended to induce or encourage a concerted refusal to work. Assuming, further, but not conceding, that the union's activity did create a secondary boycott proscribed by the National Labor Relations Act, the State Court was not precluded from granting relief because an application to the National Labor Relations Board for relief would have been futile. It may be noted, however, that this Court is not required to reach the question as to whether the railroad can secure relief where a charge is made by the railroad of a secondary boycott under Section 8(b)(4)(A) since petitioners and respondent contend that there was no secondary boycott within the meaning of Section 8(b)(4)(A).

ARGUMENT

I. The petitioner union's activity was not protected concerted activity within the meaning of Section 7 of the National Labor Relations Act.

The answer submitted by petitioners alleged, as an affirmative defense, "that the object of all of their activities was to require the various employers (motor carriers) to perform their collective bargaining agreement and or to bargain collectively in good faith under the National Labor Relation Act, * * *" (R. 203, par. 22). Witnesses for the petitioners asserted that the object of the interference on July 11 to July 14, 1952 was "to secure all of the work of driving these trailers" (R. 158, 243).

The petitioner union also testified to the negotiations of various collective bargaining agreements with the motor carriers in which, prior to the consummation of the agreement, a demand for the elimination of flat car service was presented to the motor carrier employers, but rejected by

the latter (R. 131-135, 253-254). No collective bargaining agreement, including the one in existence at the time of the complained-of activity by the union, contained a prohibition against the use of respondent's flat cars (R. 135, 209-210, 253) notwithstanding that during the course of the negotiation of the contract, demands to that effect were made (R. 131, 135, 243). The evidence was also clear that the grievance procedure provided for in the collective bargaining agreement between the petitioner union and the motor carriers was not pursued prior to the commencement of the picketing at the respondent's Yard No. 5 (R. 137, 141-142, 145).

The palpable effect, as well as the object of the picketing, as described by the petitioners, was to violate the existing collective bargaining agreement and thereby to compel the motor carriers to transport all of their trailers over the highways.

But this activity was not protected by Section 7 of the Act. This Court has held that a strike in violation of a contract is not protected under the provisions of Section 7 of the Act. *National Labor Relations Board* v. *Sands Manufacturing Co.*, 306 U. S. 333. See, too, *Hazel-Atlas Glass Co. v. National Labor Relations Board* 127 F. (2d) 109; *In the Matter of National Electric Products Corporation, etc.*, 80 N. L. R. B. 995; *In the Matter of Scullin Steel Company, etc.*, 65 N. L. R. B. 1294; *In the Matter of Joseph Dyson & Sons, Inc., etc.*, 72 N. L. R. B. 445.

So, too, a strike called without prior resort to the contractual grievance procedure, is not protected activity within the meaning of Section 7 of the National Labor Relations Act. *National Labor Relations Board* v. *Dorsey Trailers, Inc.*, 179 F. (2d) 589. Moreover, the evidence being clear that the issue had been fully discussed during the negotiations and the contract concluded between the parties, a strike to achieve a modification during the life of the existing collective bargaining agreement was not protected activity. 29 U. S. C. § 158(d). *The Jacobs Manufacturing*

Company, etc., 94 N. L. R. B. 1214.[7] See, too, *Timken Roller Bearing Co.* v. *N. L. R. B.*, 161 F. (2d) 949; *Allied Mills, Inc.*, 82 N. L. R. B. 854; *Tidewater Associated Oil Co.*, 85 N. L. R. B. 1096; Cox & Dunlop "Duty to Bargain Collectively During the Term of an Existing Agreement," 63 Harv. L. Rev. 1097.

It is significant that the work stoppage was limited to a small geographical area and was carried on intermittently so that some motor carrier trailers were delivered to the railroad and others were not. Recurrent and intermittent work stoppages are not protected concerted activities within the meaning of Section 7. *International Union U.A.W.A., A.F. of L., etc.* v. *Wisconsin Employment Relations Board*, 336 U. S. 245.

It is to be noted, too, that the picketing was described by the petitioners as "ambulatory"; but since the motor carriers had their terminals in Boston, Massachusetts, there was no justification for the picketing at the respondent's Yard No. 5. Indeed, the picketing was carried on even while there were no trucks of the motor carriers in the vicinity. This type of ambulatory picketing has been condemned by the National Labor Relations Board. *Thurston Motor Lines, Inc.*, 110 N. L. R. B. No. 122, 35 LRRM 1112; *Brewery & Beverage Drivers, etc., and Washington Coca-Cola Bottling Works*, 107 N. L. R. B. 104; *In the Matter of Sailors' Union of the Pacific, A.F.L. and Moore Dry Dock Co.*, 92 N. L. R. B. 547; *In the Matter of International Brotherhood of Teamsters, etc., and Sterling Beverages, Inc.*, 90 N. L. R. B. 401; *Amalgamated Meat Cutters, etc. and Western, Inc.*, 93 N. L. R. B. 336; *United Construction Workers, etc. and Kanawha Coal Operators Association*, 94

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[7] The National Labor Relations Board petitioned for enforcement which was granted (*National Labor Relations Board* v. *Jacobs Mfg. Co.*, 196 F. (2d) 680. However, the Board held that the company had not violated the Act in refusing to bargain about group insurance because that matter had been discussed during negotiations. The United States Court of Appeals, Second Circuit, accordingly did not rule on this aspect of the Board's determination (*National Labor Relations Board* v. *Jacobs Mfg. Co.*, supra, at p. 683, footnote 1).

N. L. R. B. 1731; *N. L. R. B.* v. *Service Trade Chauffeurs*, 191 F. (2d) 65.

Finally, the activities of the petitioners interfered with the performance by the respondent railroad of its duties as a common carrier under the Interstate Commerce Act. A strike in violation of a Federal law or which induces a violation of a Federal law is not a protected concerted activity. *Southern Steamship Co.* v. *National Labor Relations Board*, 316 U. S. 31. Interference with interstate commerce is unlawful and enjoinable notwithstanding the provisions of the National Labor Relations Act. *Pacific Gamble-Robinson Co.* v. *Minneapolis & St. Louis Ry. Co., etc.*, 85 F. Supp. 65; *Illinois Cent. R. Co.* v. *International Brotherhood of Teamsters, etc.*, 90 F. Supp. 640. Essentially, the object of petitioners' activity was to create a monopoly in violation of the applicable Massachusetts statute (Appendix, infra, pp. 24-25).

It is clear, therefore, that the petitioners' activities were not protected under Section 7, judged by any criteria.

II. The petitioners' activity did not create a secondary boycott proscribed by Section 8(b)(4)(A) of the National Labor Relations Act.

The petitioners, in their answer, deny any inducement or coercion of employees (R. 200, par. 8-9) and any coercion intended to "force or require" the respondent "to do or perform any act, or to cease to do or perform any act" (R. 203, par. 21). The respondent alleged that the coercion was addressed to motor carrier employers (R. 192, par. 9A) and consistently denied that there was a secondary boycott within the meaning of Section 8(b)(4)(A) of the National Labor Relations Act (R. 43). What is, however, most significant is the uncontradicted evidence that the inducement was directed to individual employees of some motor carriers was geographically limited. Indeed, even in the case of the individual employees approached by the petitioners Norton and McCarthy, there was not a complete cessation

of their work. Thus, witness Benkoski was prevented from bringing a trailer into Yard No. 5, but permitted to bring one out; employees of New England Transportation Company handled some trailers, but were prevented from handling others. Moreover, the work stoppage, if any, was limited to Yard No. 5. Employees of the motor carriers were not prevented from working elsewhere. The cessation of work was individual and intermittent rather than concerted.

It is plain that such conduct does not "amount to such an inducement or encouragement to 'concerted' activity" as Section 8(b)(4)(A) forbids. *National Labor Relations Board* v. *International Rice Milling Company, Inc., et al.*, 341 U. S. 665. See, too, *National Labor Relations Board* v. *Denver Building & Construction Trades Council, et al.*, 341 U. S. 675; *International Brotherhood of Electrical Workers, etc.* v. *National Labor Relations Board*, 341 U. S. 694; *Local 74, United Brotherhood of Carpenters and Joiners of America, etc.* v. *National Labor Relations Board*, 341 U. S. 707.

Concededly, railroad employees were not induced to cease work. This is not a case where the inducement to cease work did, in fact, create a secondary boycott.

Apart from the fact that the means employed by the petitioners were not those described in Section 8(b)(4)(A), the object, according to the petitioners, was not to force either the motor carriers or the railroad from ceasing to do business with each other, but to compel motor carriers to transport all of their trailers over the highways. Accordingly, since neither the means nor the object are contemplated by Section 8(b)(4)(A), there was no secondary boycott.

While the activities of the petitioners did not constitute a boycott under Section 8(b)(4)(A) of the National Labor Relations Act, the Massachusetts courts held that they did create a boycott under the State law. The construction of

the State statute by the State courts is unassailable so long as it does not infringe upon a Federal right or is not in conflict with a Federal statute.

III. If there was a secondary boycott within the meaning of Section 8(b)(4)(A) of the National Labor Relations Act, the State Court was not foreclosed from granting relief because respondent could secure no relief by applying to the National Labor Relations Board.

If it be assumed that the object and the means did, in fact, give rise to a secondary boycott, then it is submitted that the Massachusetts Court correctly concluded that the National Labor Relations Board would not entertain a charge by the railroad. It is, of course, true that the Court of Appeals for the Fifth Circuit did hold, in *International Rice Milling Co. Inc., et al.* v. *National Labor Relations Board*, 183 F. (2d) 21, that a railroad was a person, but the National Labor Relations Board has consistently rejected the construction of Section 8(b)(4)(A) by the Fifth Circuit. The Board has plainly announced that it will not entertain any charge by one who is not an employer as defined in Section 2(2) of the National Labor Relations Act. *International Brotherhood of Electrical Workers, Local 5, etc.* and *Victor M. Sprys*, d/b/a *Sprys Electric Company*, 104 N. L. R. B. 1128; *In the Matter of International Brotherhood of Electrical Workers, etc.* and *Al J. Schneider Co. Inc.*, 87 N. L. R. B. 99; *Illinois Cent. R. Co.* v. *International Brotherhood of Teamsters, etc.*, 90 F. Supp. 640; *Louisville & N. R. Co.* v. *Local Union No. 432, International Woodworkers of America, etc.*, 104 F. Supp. 748; *In the Matter of Heyward Granite Co. etc.*, 18 N. L. R. B. 542;[8] *In the Matter of Mobile Steamship Assn.*, 8 N. L. R. B. 1297;[8] *United States ex rel. Kearns* v. *Illinois*

[8] Decided under the Wagner Act (49 Stat. 449, 29 U. S. C. 151) which contained a similar exemption for railroads.

Central Railroad Company, et al., U. S. D. C. (N. D. 1952 Ill.) 31 L. R. R. M. 2192.

It is not necessary for this Court to decide whether the Board's construction is erroneous. It is enough to establish that an application for relief to the Board would have been futile and there was no obligation on the part of the respondent to apply for relief.[9] *Building Trades Council, et al.* v. *Kinard Construction Co.*, 346 U. S. 933.

It would be anomalous to suggest that the respondent could not apply for relief in the State courts until it filed a futile charge with the Board and suffered irreparable damage pending the Board's reaffirmation of its policy of rejecting charges filed by persons not included within the statutory definition of employer.

Since the Union's action was not protected under Section 7 and did not violate Section 8(b)(4)(A), but had a coercive effect on the railroad, the State Court was free to act. *International Union U. A. W. A. etc.* v. *Wisconsin Employment Relations Board*, 336 U. S. 245.

Surely, where there has been an obstruction of the streets and highways as in the case at bar, the State may invoke its protective procedures to prohibit such picketing. *Allen Bradley Local No. 1111, etc.* v. *Wisconsin Employment Relations Board*, 315 U. S. 740.

The respondent respectfully submits that since the National Labor Relations Act does not provide a remedy for conduct such as engaged in by the petitioner union, the Massachusetts court was free to act. *United Construction Workers et al.* v. *Laburnum Construction Corp.*, 347 U. S. 656.

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[9] Even in instances where administrative remedies must be exhausted, this Court has recognized the principle that resort may be had to the courts upon clear proof of the futility of pursuing administrative remedies and upon evidence of irreparable harm. *Aircraft & Diesel Equipment Corp.* v. *Hirsch*, 331 U. S. 752, 773-774.

IV. There is no conflict of decisions and there are no important questions of federal law involved.

The decision of the Supreme Judicial Court of Massachusetts is not in conflict with any decision of this Court nor is there a conflict of decisions to be resolved. Indeed, the decisional guides have already been marked out by this Court.

The Massachusetts court did not decide an issue involving the application or construction of a Federal law which is contrary to the governing decisions of this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: March 9th, 1955.

APPENDIX

Massachusetts Statutes G.L. (Ter. Ed.) c. 149

SECTION 20C For the purposes of this and the preceding section, section twenty-four of chapter one hundred and forty-nine, sections one, nine and nine A of chapter two hundred and fourteen, and sections thirteen A and thirteen B of chapter two hundred and twenty.

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation.

(c) The term "labor dispute", when used in the sections hereinbefore referred to, includes any controversy arising

out of any demand of any character whatsoever concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange, terms or conditions of employment, regardless of whether the disputants stand in proximate relation of employer and employee.

(d) Except as provided in subsection (e) of this section, the term "lawful labor dispute" includes any controversy concerning:

(1) The association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange, terms or conditions of employment;

(2) The recognition of bargaining status of a labor organization;

(3) Rates of pay, wages, hire or tenure of hours of employment, or working conditions;

(4) The execution or performance of an agreement to arbitrate an existing or future labor dispute;

(5) The execution or performance of a collective bargaining agreement containing any lawful provision of a kind commonly found in collective bargaining agreements (including but not limited to any provision requiring as a condition of employment membership in a labor organization which is the exclusive representative of the employees in the appropriate collective bargaining unit covered by such agreement when made); or

(6) Any term or condition of employment which has heretofore been regarded as a lawful objective of concerted activities on the part of employees or labor organization.

The foregoing definition shall be applicable regardless of whether the disputants stand in the proximate relation of employer and employee, but shall not be deemed to include any "unlawful labor dispute" or "unlawful secondary boycott" as defined in the following subsections:

(e) The term "unlawful labor dispute" includes any controversy arising out of a demand—

(1) That an employer commit a criminal offense or unfair employment practice in violation of chapter one hundred and fifty-one B or unfair labor practice either in violation of chapter one hundred and fifty A, or in the violation of the National Labor Relations Act;

(2) That an employer include in a collective bargaining agreement any provision the execution or performance of which would be unlawful;

(3) That an employer recognize or bargain collectively with any labor organization as the representative of its employees in any bargaining unit while another labor organization is the representative of such employees certified by the labor relations commission established by section nine O of Chapter twenty-three, or by the National Labor Relations Board, prior to the time said commission, or board, would conduct a new investigation and certification of representatives.

(4) That an employer recognize or bargain collectively with any labor organization as the representative of its employees in any bargaining unit within one year after the labor relations commission established by section nine O of chapter twenty-three has determined in a proceeding under section five of chapter one hundred and fifty A that such employees do not desire to be represented by such labor organization; or

(5) Made by any party to a jurisdictional dispute as defined in section nine B of chapter two hundred and fourteen who has failed to abide by any voluntary arbitration procedure applicable to such dispute or to comply with the terms of the arbitration award.

(f) The term "unlawful secondary boycott" means any strike, slowdown, boycott or concerted cessation of work or withholding of patronage or services, arising out of a labor dispute, where an object thereof is to force or require any person not otherwise engaged in such labor dispute to cease using, selling, handling, transporting, or dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; provided, however, that a secondary boycott may be lawfully directed at a person the greater part of whose current business over a representative period is processing, selling, handling, transporting or otherwise dealing in the goods of an employer primarily interested in a lawful labor dispute or who, by any agreement, understanding or arrangement with such employer, is requiring his own employees to perform work or services which would be done by the employees of such employer in the absence of a labor dispute (1950, 452, §§ 1, 2, apvd. May 11, 1950; effective 90 days thereafter).

G. L. (Ter. Ed.) c. 214

SECTION 9A INJUNCTIONS IN LABOR DISPUTES (1) No court shall have jurisdiction to issue a preliminary or permanent injunction in any case involving or growing out of a labor dispute, as defined in section twenty C of chapter one hundred and forty-nine, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) The unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to the complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon the complainant by the denial of relief than will be inflicted upon the defendants by the granting of relief;

(d) That the complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect the complainant's property are unable or unwilling to furnish adequate protection.

(2) Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the city or town within which the unlawful acts have been threatened or committed charged with the duty to protect the complainant's property; provided, however, that if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to the complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient if sustained, to justify the court in issuing a preliminary injunction upon a hearing after notice, and a statement of the grounds

justifying the issuance of such order shall be made a matter of record by the court; provided, further, that no such temporary restraining order shall be issued except upon its also being made to appear to the satisfaction of the court (either from the testimony of witnesses or from written assurances filed by counsel in regard to his personal conduct)—

(A) That a principal representative or attorney of the employees or labor organization participating in such dispute was informed of the time and place at which the application for a temporary restraining order would be presented sufficiently in advance to appear in opposition thereto; or

(B) That the complaint made every reasonable effort to comply with paragraph (A) but was unable so to do; provided, however, that notification by mail alone shall not be deemed compliance with this section without proof of receipt.

Such testimony or written assurances shall set forth in detail the manner in which the complainant complied with paragraph (A) or (B) and shall be made part of the record in the case. If the defendants appear in opposition to the application for a temporary restraining order they shall be afforded an opportunity to cross-examine the complainant's witnesses at such length as is reasonable under the circumstances and a like opportunity to introduce evidence in opposition thereto. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days and shall not be subject to renewal. No temporary restraining order or preliminary injunction shall be issued except on condition that the complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient in its opinion to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including

all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(3) The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing the complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by action at law or suit in equity.

(4) No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or, who has failed to make every reasonable effort to settle such dispute, either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(5) No restraining order, other than a temporary restraining order issued without notice as provided in subdivision (2) of this section, and no preliminary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said statement of grounds or findings of fact made and filed by the court as provided herein.

(6) Whenever the court shall issue or deny a preliminary injunction in a case involving or growing out of a labor dispute, the court, upon the request of any party to the proceeding, shall forthwith report any questions of law involved in such issue or denial to the supreme judicial court and stay further proceedings except those necessary to preserve the rights of the parties. Upon the filing of such report, the questions reported shall be heard in a summary manner by a justice of the supreme judicial court, who shall with the greatest possible expedition affirm, reverse or modify the order of the superior court. The decision of such justice of the supreme judicial court upon the questions so raised shall be final, but without prejudice to the raising of the same questions before the full court upon exceptions, appeal or report after a final decree in the case. (1935, 407 § 4, appvd. July 12, 1935; 1950, 452, § 3, appvd. May 11, 1950; effective 90 days thereafter.)

G.L. (Ter. Ed.) c. 93

SECTION 2. MONOPOLIES AND DISCRIMINATIONS IN THE SALE OF ARTICLES, ETC., IN COMMON USE PROHIBITED. Every contract, agreement, arrangement, combination or practice in violation of the common law whereby a monopoly in the manufacture, production, transportation or sale in the commonwealth of any article or commodity in common use is or may be created, established or maintained, or whereby competition in the commonwealth in the supply or price of any such article or commodity is or may be restrained, or prevented or whereby, for the purpose of creating, establishing or maintaining a monopoly within the commonwealth of the manufacture, production, transportation or sale of any such article or commodity, the free pursuit in the commonwealth of any lawful business, trade or occupation is or may be restrained, or whereby the price of any article or commodity in common use is or may be unduly enhanced within the commonwealth, is hereby declared to be against public policy, illegal and void.